



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.67 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

ZION OBIRI OMWERI.....ACCUSED

SENTENCE

1. The accused person herein **ZION OBIRI OMWERI** was initially charged with one count of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code**.

2. By a plea bargain agreement entered into between the State and the accused person on 17th July 2015, the charge was reduced to **Manslaughter contrary to Section 202** as read with **Section 205 of the penal Code**.

3. The particulars of the charge are that on **2nd July 2011** at Nyansore sub-location in South Gucha District within Kisii County, the accused unlawfully caused the death of **PETER MANONO MOCHAMA**.

The accused pleaded guilty to the lesser charge of **Mansalughter** and was consequently convicted on his own plea of guilty.

4. The circumstances surrounding the case were that the accused and the deceased had a long standing dispute and following an argument on **2nd July 2011**, a physical confrontation ensued in which the accused picked up a stone and hit the deceased thereby causing him fatal injuries.

5. In mitigation, Mr. Okenye counsel for the accused submitted that the accused acted in self defence after he was attacked by the deceased who had a walking stick. He stated that the accused was remorseful as he did not intend to kill the deceased. Mr. Okenye pleaded for a non-custodial sentence for the accused whom he added was aged 34 years and had a wife and 4 children to fend for.

6. The Probation Officer's presentencing and victim impact assessment report filed on **15th December 2015** recommended a non-custodial sentence for the accused since his family and community were ready to welcome him back home.

7. I have carefully considered the circumstances under which the offence was committed, the mitigation by the counsel for the accused and the Probation Officer's report.

8. I note that the deceased's death was purely accidental and that the accused has been in custody for 4 ½ years while awaiting his trial. I note that the accused had the option of running away when he was attacked by the deceased but he instead chose to retaliate with deadly force, thereby causing the deceased fatal injuries.

9. Having regard to the above, I hereby sentence the accused herein **ZION OBIRI OMWERI** to 2 years probation during which period he will be supervised by the Probation Officer of his area.

10. It is so ordered.

Dated, signed and delivered in open court this 27th day of January, 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- No Appearance for the Accused
- Omwoyo: court clerk